ST 98-0407-GIL 12\14\1998 NEXUS

Determinations regarding sales tax nexus are normally very fact dependent. This letter contains a general discussion of nexus in Illinois. See 86 Ill. Adm. Code 150.201(i). (This is a GIL.)

December 14, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 5, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

A client of BUSINESS (hereinafter referred to as 'Taxpayer') requests a general information letter regarding whether it has sufficient nexus with Illinois for both sales and use tax collection and corporate income tax purposes. Taxpayer believes that its actions in Illinois have not risen to a level that would create such nexus and desires a confirmation of this conclusion. The relevant facts and circumstances upon which this ruling is requested are detailed below.

FACTS

Taxpayer's primary activity involves mail order sales of its canned software and its only office is located out-of-state. The sales are accepted via telephone orders from customers in various states, including Illinois. The telephone orders are not received in Illinois and the product's delivery is made through the use of the United States mail or other common carriers. In addition, once a year Taxpayer conducts a one to four day educational seminar in Illinois on specific legal and business issues. Attendees of these seminars are charged a few hundred dollars for their attendance, which includes the cost of materials and any other tangible personal property distributed at the seminar. At such conferences, Taxpayer did not solicit sales or have any sales representatives present, although product literature and brochures were available for attendees to collect. In fact, these seminars are completely unrelated to the software sold and do not provide any training or instructional comment in regard to such software.

Aside from these seminars, Taxpayer has had no direct physical presence or contact with Illinois. It has never hired, trained, or

supervised personnel in the state. In addition, it has not repaired any property, collected on delinquent accounts, investigated credit worthiness or installed or supervised installation of its products in the state. Moreover, Taxpayer has not provided any kind of technical assistance, resolved customer complaints, approved or accepted orders, repossessed property, secured deposits on sales, or picked up or replaced any damaged or returned property in the state. Furthermore, it does not possess a telephone listing or other public listing within the state and has never entered into a franchising or licensing agreement in Illinois.

ISSUES

1. Does Taxpayer have nexus in Illinois making it liable for the collection of Illinois sales and use tax on taxable sales made into the state?

2. Does Taxpayer have nexus in Illinois making it subject to the Illinois corporate income tax?

CONCLUSION

The Taxpayer's activities within Illinois do not give rise to either sales and use or corporate income tax nexus.

ANALYSIS OF APPLICABLE LAW

I. Sales and Use Tax Nexus

A. U.S. Constitutional Requirements

Federal Constitutional, statutory and case law limit the ability of the states to impose taxes on out-of-state ('foreign') entities or persons. The Commerce Clause of the U.S. Constitution reserves to Congress the power to regulate commerce among the states. See U.S. CONST. art. I, § 8, cl. 3. In Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), the U.S. Supreme Court set forth the following four-pronged test which must be satisfied for a tax on multistate transactions to be constitutional under the Commerce Clause: (1) the tax is applied to an activity having substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to services provided by the taxing state.

Under the substantial nexus requirement, an out-of-state seller may only be compelled to collect a state's use tax if it has certain minimum contacts, or 'nexus' with the state. In 1967, the U.S. Supreme Court concluded that a mail order company could not be forced to collect Illinois use tax on sales made to customers in Illinois, because the corporation's only activity in Illinois consisted of soliciting sales by catalogs and flyers followed by delivery of the goods by mail or common carrier. See National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753 (1967).

Although the National Bellas Hess case prevented use tax collection based on both Commerce Clause and Due Process considerations, the

position that physical presence is required was specifically reaffirmed only with respect to the Commerce Clause by the Supreme Court in Quill Corp. v. North Dakota, 504 U.S. 298 (1992). In Quill, the Supreme Court ruled a seller that had no physical presence in North Dakota and could not, on Commerce Clause grounds, be required to collect and remit the state's sales and use tax. However, the Court also held that Due Process considerations do not prohibit the states from enforcing such tax collection and remittance requirements. As a result, the court overruled that portion of the National Bellas Hess holding relating to Due Process while upholding its decision in that case regarding the Commerce Clause. With the National Bellas Hess due process objection removed, the Court noted that Congress is now free to decide whether, when, and to what extent the sales may burden interstate mail-order concerns with a duty to collect use taxes. Congress has yet to pass any legislation on this issue.

Under Quill, a taxpayer's physical presence in a state is required under the Commerce Clause before the state can impose use tax obligations on the taxpayer. For instance, employing individuals in the state, maintaining an office or other place of business in the state, or owning property in the state, is physical presence sufficient to establish nexus. However, a taxpayer's ownership of property in a state will not necessarily establish nexus if the property is insignificant. For example, in Quill, the Supreme Court refused to give constitutional significance to the fact that the taxpayer retained title to licensed software present in the state.

With respect to the presence of advertising offices in a state, the U.S. Supreme Court has held that the presence in California of advertising sales offices for the National Geographic magazine provided sufficient nexus so that California could require National Geographic to collect the use tax on mail-order sales made to California by another division of the Society. See National Geographic Society v. California Board of Equalization, 430 U.S. 551 (1977). The Court concluded that despite the fact that the two advertising sales offices had nothing to do with the mail-order division, the offices benefited from California services, and thus provided the connection with the state that allowed California to require the Society to collect the state's use tax.

With respect to the employing of individuals in a state, the Supreme Court has determined it constitutionally insignificant whether the individuals are employees or independent contractors; agency creates nexus for sales and use tax purposes. See Scripto, Inc. v. Carson, 362 U.S. 207 (1960). In Scripto, Florida asserted the taxpayer, which operated an advertising specialty company in Georgia, had nexus in the state. Specifically, the taxpayer sold mechanical writing instruments which were adapted to advertising purposes by placing printed material on the instruments. The taxpayer had no office or other place of business in Florida, nor did it have any employees or agents in the state. To solicit orders from Florida customers, the taxpayer contracted with independent salesmen or brokers. The contract specifically provided that it was the intention of the parties 'to create the relationship of independent contractor.' In holding the taxpayer had nexus with Florida, the Scripto court concluded:

> [Taxpayer] has 10 wholesalers, jobbers, or 'salesmen' conducting continuous local solicitation in Florida and forwarding the resulting orders from that State to Atlanta for shipment of the ordered goods. The only incidence of this sales transaction that is nonlocal is the acceptance of the order. *True, the 'salesmen' are not regular employees of [taxpayer] devoting full time to its service, but we conclude that such a fine distinction is without constitutional significance. The formal shift in contractual tagging of the salesman as 'independent' neither results in changing his local function of solicitation nor bears upon its effectiveness in securing a substantial flow of goods into Florida .... To permit such formal 'contractual shifts' to make a constitutional difference would open the gates to a stampede of tax avoidance .... The test is simply the nature and extent of the activities of the [taxpayer] in Florida ....*

Id. (emphasis added). Therefore, if an individual is performing business activities in a state as an agent on behalf of the taxpayer, nexus may be established in that state, regardless of the legal nature of the relationship between the individual and the taxpayer.

Finally, in the case of Miller Brothers Company v. State of Maryland, the U.S. Supreme Court held that the corporation of another state, not qualified to do business in Maryland, could not be required to collect Maryland use taxes on sales to Maryland residents made at its Delaware store. Orders were not taken by mail or telephone, there was no solicitation other than general advertising and occasional circulars to former customers, and the only contact was the delivery in the store's trucks of some items of merchandise sold to Maryland residents. See Miller Brothers Company v. State of Maryland, 347 U.S. 340. The Court stated '[t]his is not the case of a merchant entering a state to maintain a branch and engaging in admittedly taxable retail business but trying to allocate some part of his total sales to nontaxable interstate commerce...there is a wide gulf between this type of active and aggressive operation within a taxing state and the occasional delivery of goods sold at an out-of-state store with no solicitation other than the incidental effects of general advertising.' Id.

Based on the Supreme Court decisions in Complete Auto, National Bellas Hess, Quill, National Geographic, Scripto and Miller Brothers we can separately determine if each of Taxpayer's activities would cause it to have nexus in other states.

B. Illinois Sales and Use Tax Nexus

The states are free to impose a sales and use tax on interstate commerce to the extent imposition of such tax is in conformity with the above principles. The Illinois sales and use taxes are contained for four separate acts: the retailers' occupation tax, the use tax, the service occupation tax, and the service use tax. If a sale is determined to be a sale of tangible personal property, the retailer's occupation or use tax will be imposed on all charges associated with the sale. If there is a sale of a service, only the charges associated with the cost of the tangible personal property used in or transferred in the provision of the service is taxable.

The retailers' occupation tax is imposed on all persons who engage in the business of selling tangible personal property at retail in the state of Illinois. The tax applies to any person who holds himself out as engaged in business or who habitually makes such sales. 35 ILL. COMP. STAT. 120/1; ILL. ADMIN. CODE TIT. 86 § 150-201 (H). The use tax complements the retailers' occupation tax and applies to 'the privilege of using, in this state, any kind of tangible personal property that is purchased anywhere at retail from a retailer.' 35 ILL. COMP. STAT. § 105/3; ILL. ADMIN. CODE TIT. 86 § 150.101. The service occupation tax is a tax imposed on persons engaged in the business of making sales of services. The tax base is the 'serviceman's cost price of tangible personal property transferred by the serviceman as an incident to the sale of [a] service.' ILL. ADMIN. CODE TIT. 86 § 140.101(B).

Under Illinois law, an entity 'engaging in a business in interstate commerce' will not be subject to the service occupation tax or the retailers' occupation tax. 35 ILL. COMP. STAT. § 115/3-45, 120/2-60. Moreover, neither tax shall apply 'when the business may not, under the Constitution and the statutes of the United States, be made the subject of taxation by this state.' Id.

In addition, the requirement to collect and remit the use tax and service use tax depends upon whether or not the retailer or service provider 'maintains a place of business in the state of Illinois.' 35 ILL. COMP. STAT. § 105/3-45, 110/3-40. 'Maintaining a place of business' for Illinois tax collection purposes, means doing any of the following in the state:

1. Having or maintaining an office, distribution or sales house, warehouse or other place of business, or utilizing an agent or other representative;

2. Soliciting orders for tangible personal property through telecommunications or television shopping systems;

3. Soliciting orders through advertisement when, pursuant to a contract with a broadcaster or publisher, the advertisement is primarily disseminated in Illinois;

4. Soliciting sales through the mail if solicitations are substantial and recurring and if the retailer utilizes other in-state benefits such as banking, financing, debt collection, telecommunication or marketing activities, or benefits from the location of authorized in-state installation, servicing or repair facilities;

5. Being owned or controlled by the same interests that own or control any retailer engaged in the same or similar line of business in the state;

6. Having a franchisee or licensee operating under its trade name if such are required to collect the tax;

7. Advertising via cable, pursuant to a contract with the cable television operator, for the purpose of soliciting orders;

8. Engaging in activities which would otherwise subject the retailer to in-state collection obligations.

35 ILL. COMP. STAT. § 105/2, 110/2.

II. Corporate Income Tax Nexus

A. U.S. Constitutional Requirements

The U.S. Constitution imposes both Due Process and Commerce Clause limitations on state taxation of income. The nexus standard imposed by the Due Process Clause requires 'a minimal connection between the interstate activities and the taxing state, and a rational relationship between the income attributed to the state and the intrastate values of the enterprise.' See Mobil Oil Corp. v. Cmm'r of Taxes of Vermont, 445 U.S. 425, 436-37 (1980). The nexus standard imposed by the Commerce Clause is articulated in Complete Auto and Quill, as discussed above.

Congress has placed additional restrictions on the state taxation of income through the enactment of Public Law 86-272 which restricts any state from imposing a net income tax (or franchise tax based on income) on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property. See 15 U.S.C. § 381. Protection under P.L. 86-272 applies only to activities that are limited to solicitation of orders for tangible personal property that are approved outside the state and shipped or delivered from outside the state. Solicitation by independent contractors is also protected if the sales are shipped from outside the state or from inventory within the state owned by the independent contractor. Id. P.L. 86-272 does not protect a corporation in the state where it is incorporated nor does it protect sellers of services or intangibles. Id. In addition, it provides protection only from taxes based on income, not taxes measured by net worth or gross receipts, or sales and use taxes. Id.

Although the term 'solicitation' is not defined by either Public Law 86-272, the United States Supreme Court has recently established a standard for interpreting the term 'solicitation'. In addition, the Court also established a 'de minimis' exception to activity that would otherwise not be immune under Public Law 86-272. See Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 112 S. Ct. 2447 (1992). In Wrigley, the client, an Illinois-based manufacturer of chewing gum, maintained a regional manager and sales representatives in Wisconsin who were responsible for selling chewing gum in the state. Id. These individuals resided in Wisconsin and were provided with company cars. Id. All sales orders obtained by the sales representatives were sent to Illinois for approval and were filled by shipment through common carrier from outside Wisconsin. Id. The sales representatives distributed promotional materials and free samples and directly requested orders of the client's products. Id.

In addition, they provided customers with free display racks, stocked the display racks for a fee when the customer did not want to wait for a shipment, and replaced stale gum free of charge. Id. The client reimbursed one sales representative for rental of storage space for gum and other supplies. Id. The regional manager occasionally represented the company in credit disputes with Wisconsin customers. Id.

First, with respect to establishing the scope of 'solicitation,' the Wrigley Court concluded solicitation means (1) speech or conduct that explicitly or implicitly invites an order; and (2) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order. Id. Ancillary activities are those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders. Id. Second, with respect to the establishment of a 'de minimus' standard, the Court concluded that the conduct of activities not falling within the foregoing definition of solicitation will cause the company to lose Public Law 86-272 protection, unless the disqualifying activities, taken together, are de minimis. Id. Whether or not an activity is de minims depends upon whether that activity establishes a non-trivial additional connection with the state. Id. The Wrigley Court held that the replacement of the stale gum, the supplying of gum by the sales representatives for a fee, and the storage of gum in the state were not ancillary activities and that, taken together, constituted a nontrivial additional connection with the state. Id.

B. Illinois Corporate Income Tax Nexus

A foreign corporation may be subject to taxation under the Illinois income tax provisions only if it fails to qualify for exemption and protection under P.L. 86-272 or any of the above mentioned cases. The Illinois income tax is 'a tax measured by net income [and] is hereby imposed on every individual, corporation, trust and estate for each taxable year ending after July 31, 19969 on the privilege of earning or receiving income in or as a resident of this state.' 35 ILL. COMP. STAT. 5/201(A).

III. Illinois Taxation of Taxpayer

As we explain below, Taxpayer's activities within Illinois do not give rise to either sales and use or corporate income tax nexus.

A. Illinois Sales and Use Tax Imposition

Under Illinois law, Taxpayer should not be found liable for the collection of the service occupation tax or the retailers' occupation tax, since it is engaged in interstate commerce. See 35 ILL. COMP. STAT. § 115/3-45, 120/2-60.

In addition, Taxpayer should not be required to collect and remit any use tax or service use tax since it does not 'maintain a place of business in the state of Illinois.' Taxpayer does not have: an office, distribution or sales house, warehouse or other place of business, or utilize an agent or other representative; solicit orders for tangible personal property through telecommunications or

television shopping systems; solicit orders through advertisement, pursuant to a contract with a broadcaster or publisher; solicit sales through the mail which are substantial and recurring along with utilizing other benefits such as banking, financing, debt collection, telecommunications or marketing activities, or benefit from the location of authorized in-state installation, servicing or repair facilities; is not owned or controlled by the same interests that owns or controls another retailer engaged in the same or similar line of business in the state; have a franchisee or licensee operating under its trade name if such are required to collect the tax; advertising via cable, pursuant to a contract with the cable television operator, for the purpose of soliciting orders; or engage in activities which would otherwise subject the retailer to in-state collection obligations.

The fact that Taxpayer does not have Illinois nexus is further supported through an examination of relevant rulings and case law. In Illinois Private Letter Ruling, ST 96-0378 it was ruled that a mail order company with no stores, agents or employees in the Illinois would not be required to collect use tax on sales made into the state. It was also found that such a mail order company would not be liable for the tax even if another business with common ownership opened retail stores in the state. In Brown's Furniture, Inc. v. Raymond Wagner, Director of Revenue, Illinois Supreme Court, No. 78195 (Ill. 1996), the Illinois Supreme Court held that making 942 delivery trips in the state (during a 10 month period) will subject a company to tax collection responsibilities, since such presence can not be deemed 'occasional' or sporadic. The Brown court distinguished the specific facts of the case from those of the Department of Revenue v. Share International Inc., 20 Fla. L. Weekly 1911 (Fla. App. 1995). The court in Share International held that an out-of-state mail order company whose employees attendance at Florida seminars for three days in five different years was insufficient to establish nexus. the Illinois Supreme Court's reference to this Florida decision implies its acceptance of the holding, and therefore Taxpayer should not be deemed to have Illinois nexus, since the out-of-state mail order company in Share did not have such nexus (in which there were almost identical facts). Here, Taxpayer is simply an out-of-state mail order company that does not personally make deliveries in the state or have employees acting in a sales agent capacity in the state. In addition, its presence in the state was never in excess of four days in any given year. As such, it should not be subject to Illinois sales and use tax collection responsibilities.

Moreover, under the Constitutional limitations discussed above, because Taxpayer has no more than a de minimis physical presence in Illinois, it should not be liable for the collection of this tax under the requirements set forth in Quill. Unlike the facts in National Geographic, Taxpayer has no advertising offices in Illinois. Unlike the facts in Scripto, Taxpayer does not have employees, independent contractors or any other type of agent in Illinois soliciting. Although Taxpayer received orders by telephone, it is not qualified to do business in Illinois and unlike the taxpayer in Miller Brothers, it did not personally deliver merchandise directly into Illinois. Clearly, 'this is not the case of a merchant entering a state to maintain a branch and engaging in admittedly taxable retail business.'

Applying the Complete Auto Transit analysis to Taxpayer it is also clear that it should not be held liable under any of Illinois's tax provisions. Although the taxes may be deemed fairly apportioned, they would not be related to the services provided by Illinois and would discriminate against interstate commerce. The allowance of such an extension of a state's jurisdiction to tax would force a company to forgo even minor forays into a foreign state's jurisdiction, for fear of being subject to its tax reach. This type of jurisdictional extension would create an obvious finding of discrimination against interstate commerce. The Commerce Clause can clearly not be interpreted to allow such minor activities, such as those conducted by Taxpayer, to allow a state the privilege to tax.1 As such, Taxpayer should not be held liable for Illinois sales and use tax collection.

B. Illinois Income Tax Imposition

In regard to the Illinois income tax, P.L. 86-272 protects Taxpayer from taxation even if it should be found to have nexus in Illinois.1 Under the standards set forth in Quill and Wrigley, Taxpayer should be considered to be merely soliciting in Illinois.2 These rders are sent outside of Illinois for approval/rejection and they are delivered form a point outside the state through an independent distributor. As such, Taxpayer should be exempt from Illinois income tax because its activities were almost completely interstate in nature. In addition, the activities it conducted at the Illinois seminars were of a purely de minimis nature.

The Illinois case law relies on the nexus requirements of federal statutory and case law. In Northwest Airlines, Inc. and Republic Airlines, Inc. v. The Department of Revenue, Ill. App. Ct. No. 1-96-4267 (Ill. App. Ct. 1998) it was stated that '[a]lthough the Department maintains that the nexus requirement is satisfied where the corporation avails itself of the privilege of carrying on business in this state, GTE plainly requires something more, i.e., there must be a nexus with the Illinois transaction by which the tax is measured.4 Moreover, in Erieview Cartage, Inc. v. Department of Revenue, Illinois Appellate Court, First District, No. 1-93-2656 (1996), the court held that such nexus would be found for an out-of-state company that personally made over 500 deliveries within the state during any given year. Given the requirement of a nexus connection with the state and the fact that Taxpayer activities within the state were clearly de minimis, it should not be found to be subject to the Illinois corporate net income tax.

It is believed that BUSINESS has presented sufficient reason for the Department to rule as requested. However, if the Department intends to issue an unfavorable ruling, BUSINESS requests it be given notice of such intent, so that it may provide additional information, arguments or clarifications as is necessary to persuade the Department to rule in its favor.

If you should have any questions or comments regarding the above request please do not hesitate to contact me at telephone ####.

This letter addresses the issue relating to Illinois sales tax. A response to the income tax issue is being forwarded under separate cover.

Determinations regarding sales tax nexus are normally very fact specific. We cannot make a binding determination on this issue in the context of a General Information Letter. However, the following discussion is helpful for businesses to use in determining their Illinois tax liability.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), copy enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, copy enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The provisions of Section 150.201(i) are subject to the U.S. Supreme Court ruling in Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992) in which the Court set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. Quill invoked a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself of the benefits of an economic market in a forum state. Quill at 1910. The second prong of the test requires that, if due process requirements have been satisfied, the person or entity must have a physical presence in the forum state to satisfy the Commerce Clause.

A physical presence does not require an office or other physical building. Under Illinois law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the delivery and installation of the vendor's product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, 171 Ill.2d 410 (1996).

In Private Letter Ruling 95-0126, the Department found that nexus existed where a mail order business' physical presence in Illinois consisted of the presence of its tear-off sheet advertising displayed in locations where an unrelated business was demonstrating its own product, which product was a component part of the mail order business' product. The Department's position was that the mail order activities directed at Illinois, taken together with its participation in, and benefit from, the component part business' demonstration and advertising program in retail stores in Illinois was sufficient to find "substantial nexus" here. It is therefore possible that, depending upon the specific facts of the situation, the Department could find that nexus is created when employees of a company conducting mail order business in Illinois come into Illinois each year to conduct seminars and bring with them product literature and brochures which they make available to attendees.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Encl.

1. Taxpayers only contact with Illinois was limited to its seminar presence, which constituted less than 1% of its annual activities. This was determined taking the number of days operating in Illinois divided by the total annual period of operation.

2. For the reasons detailed above, Taxpayer maintains that such nexus can not be established in this case.

3. The activities conducted by Taxpayer during its limited Illinois seminar presence were de minimis and should not factor into this analysis. In fact, the presence in Illinois of Taxpayer's employees only represented approximately 1% of their total annual employment activities. This was calculated taking total hours worked in the same state divided by their total hours worked.

4. The court in making this holding was citing to the ruling in GTE Automatic Electric, Inc. v. Robert H. Allphin Director of Revenue, 68 Ill.2d 326 (Ill. 1977).